

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) BTM WIRELESS, INC.,

Plaintiff,

vs.

Case No. 4:22-cv-00401-GKF-CDL

(1) BEARCOM GROUP, INC.,

Defendant.

**DEFENDANT’S ANSWER AND DEFENSES TO PETITION AND COUNTERCLAIM**

Defendant BearCom Group, Inc. (“Defendant” or “BearCom”), by and through its attorneys of record, answers the Petition<sup>1</sup> [Dkt. 2-1] (the “Petition”) filed by BTM Wireless, Inc. (“Plaintiff” or “BTM”) and states as follows:

**RESPONSES TO PARTIES**

1. BearCom lacks sufficient information to admit or deny the allegations contained in Paragraph 1 and therefore denies the same.

2. BearCom admits that it is a Texas corporation with offices in Broken Arrow in Tulsa County, Oklahoma. BearCom further admits that it conducts business in the State of Oklahoma out of its Broken Arrow office and that Matt Bane provided certain services to BearCom as an independent contractor while working out of BearCom’s Broken Arrow office. BearCom lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 2 and therefore denies the same.

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<sup>1</sup> Because this matter was filed initially in an Oklahoma state district court, the initial filing is a “Petition,” rather than a “Complaint.”

3. Paragraph 3 contains legal conclusions to which no response is required. To the extent a response is required, BearCom denies the allegations contained in Paragraph 3. However, BearCom admits that this Court may properly exercise its jurisdiction over Plaintiff's claims.

**RESPONSES TO FACTUAL BACKGROUND**

4. BearCom admits that BTM, through its owner Matt Bane, sold Motorola 2-way radio products and related systems on behalf of BearCom as an independent contractor from the time that BearCom acquired Total Radio, Inc until the termination of the independent contractor relationship in May 2022. BearCom further admits that BearCom and BTM had an oral agreement, pursuant to which BTM was paid a commission only upon BearCom's receipt of payment from the customer. BearCom lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 4 and therefore denies the same.

5. BearCom admits the allegations contained in Paragraph 5.

6. BearCom admits that on or about May 19, 2022, Alton Ellis informed Matt Bane that BearCom was ending its relationship with BTM effective immediately. BearCom denies any remaining allegations contained in Paragraph 6 as stated.

7. BearCom denies the allegations contained in Paragraph 7 as stated.

8. BearCom admits that Plaintiff was an independent contractor with whom BearCom contracted to solicit customers and sell products on BearCom's behalf using his independent discretion. The remaining allegations contained in Paragraph 8 are legal conclusions to which no response is required. To the extent a response is required, BearCom denies the remaining allegations contained in paragraph 8.

9. Paragraph 9 contains legal conclusions to which no response is required. To the extent a response is required, BearCom denies the allegations contained in Paragraph 9.

10. BearCom denies the allegations contained in Paragraph 10.

11. Paragraph 11 contains legal conclusions to which no response is required. To the extent a response is required, BearCom denies the allegations contained in Paragraph 11.

12. Paragraph 12 contains legal conclusions to which no response is required. To the extent a response is required, BearCom denies the allegations contained in Paragraph 12.

13. BearCom denies the allegations contained in Paragraph 13.

14. Paragraph 14 contains legal conclusions to which no response is required. To the extent a response is required, BearCom denies the allegations contained in Paragraph 14.

### **RESPONSE TO PLAINTIFF'S PRAYER**

Defendant denies that Plaintiff is entitled to any relief for any alleged claims in this action and denies that Plaintiff is entitled to any of the stated relief sought in its PRAYER.

### **DEFENSES**

Subject to and without waiving the foregoing, Defendant alleges the following defenses. By pleading these defenses, Defendant does not assume the burden of proving any fact, issue, or element of a claim for relief where such burden properly belongs to Plaintiff.

1. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

2. Plaintiff is estopped from pursuing its claims by reason of its own acts, omissions, and course of conduct.

3. Defendant asserts and alleges that Plaintiff's claims are barred because Defendant has fully performed and discharged its obligations under the applicable agreement.

4. Defendant asserts and alleges that Plaintiff's claim should be dismissed for failure to provide sufficient evidence or to establish entitlement to any additional benefits under the terms of the agreement between the parties.

5. To the extent Plaintiff is entitled to damages, Defendant is entitled to a credit for, or set off against, the value of property that Plaintiff took from Defendant.

6. To the extent Plaintiff is entitled to damages, Defendant is entitled to a credit for, or set off against, amounts overpaid to Plaintiff in the course of the independent contractor relationship.

7. Defendant's actions regarding Plaintiff were taken in good faith and with a reasonable belief that their actions were lawful, and none of Defendant's actions were intentional, reckless, or willful violations of any law.

Defendant reserves the right to subsequently assert and add affirmative defenses as they become known to Defendant through continued investigation and discovery.

WHEREFORE, Defendant BearCom prays for dismissal of Plaintiff's Petition with prejudice, judgment in its favor and against Plaintiff, for its attorneys' fees and costs as allowed by law, and any further relief as the Court may deem just and proper.

**DEFENDANT BEARCOM GROUP, INC.'S COUNTERCLAIM AGAINST PLAINTIFF**

Defendant/Counterclaimant BearCom Group, Inc. ("BearCom") hereby alleges and states as follows:

**I. PARTIES.**

1. BearCom is a Texas corporation with an office in Broken Arrow, Oklahoma. BearCom supplies communications solutions to its customers, including two-way radios and other products and services.

2. Upon information and belief, BTM Wireless, Inc. (“BTM”) is an Oklahoma business principally operating out of Broken Arrow, Oklahoma, and Matt Bane is the sole owner of BTM.

3. Between June 2019 and May 2022, BTM, acting through Matt Bane, provided certain services to BearCom pursuant to an oral independent contractor agreement between the parties.

## **II. JURISDICTION AND VENUE.**

4. The events, acts, and omissions giving rise to the counterclaim occurred in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

6. The counterclaim involves the same operative facts and are related to the claims alleged in Petition.

7. This Court has jurisdiction over the counterclaim pursuant to 28 U.S.C. § 1367.

## **III. FACTUAL ALLEGATIONS.**

8. On or about May 19, 2022, BearCom General Manager Alton Ellis informed Mr. Bane that BearCom was terminating its independent contractor relationship with BTM.

9. Mr. Bane was instructed to wait until Mr. Ellis was present in BearCom’s Broken Arrow office to retrieve his personal belongings.

10. Notwithstanding Mr. Ellis’s specific instructions, Mr. Bane returned to the BearCom office in Broken Arrow and retrieved his personal belongings, along with certain property belonging to BearCom.

11. Upon information and belief, the BearCom property that Mr. Ellis took from the Broken Arrow office includes radios, belt clips, and chargers with an estimated value of more than \$13,000.

**IV. COUNT 1 – CONVERSION.**

12. BearCom restates and incorporates by reference all of the allegations set forth above as if set fully forth herein.

13. Matt Bane, acting on behalf of BTM, removed property belonging to BearCom from BearCom's offices without permission and has since refused to return BearCom's property.

14. BTM's conversion of BearCom's property permanently deprived BearCom of its ownership rights.

15. As a proximate result of BTM's conversion of BearCom's property, BearCom has suffered economic damages in an amount to be determined at trial.

WHEREFORE, BearCom respectfully requests that the Court (1) enter judgment in favor of BearCom on its counterclaim; (2) award damages to BearCom in an amount to be determined at trial; (3) award BearCom its costs and interest, including its attorney's fees; and (4) award BearCom such other relief as this Court deems just and proper.

Respectfully submitted,

s/ Lori Fixley Winland

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**ATTORNEYS FOR DEFENDANT  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of September, 2022, I electronically transmitted the foregoing document to the Court Clerk using the ECF system of filing, which will transmit a Notice of Electronic Filing to the following ECF registrants:

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